

**CITY OF NEWTON
PURCHASING DEPARTMENT**

CONTRACT FOR DEPARTMENT PUBLIC WORKS

**PROJECT MANUAL:
RENTAL OF SIX (6) SKID STEER LOADERS
*INVITATION FOR BID #14-50***

Bid Opening Date: November 14, 2013 at 10:00 a.m.

**OCTOBER 2013
Setti D. Warren, Mayor**

**CITY OF NEWTON
PURCHASING DEPARTMENT
INVITATION FOR BID No. #14-50**

The City of Newton invites sealed bids from Contractors for:

RENTAL OF SIX (6) SKID STEER LOADERS

Bids will be received until: **10:00 a.m., Thursday, November 14, 2013**
at the Purchasing Department, Room 204, Newton City Hall, 1000 Commonwealth Ave., Newton, MA 02459. Immediately following the deadline for bids all bids received within the time specified will be publicly opened and read aloud.

Contract Documents will be available online at : www.newtonma.gov/bids or for pickup at the Purchasing Department after **10:00 a.m., October 31, 2013.**

There will be no charge for contract documents.

Bid surety is **not** required with this bid.

The City is seeking bids **for the rental of six (6) skid steer loaders** for the Department of Public Works for the four (4) winter months (December, January, February and March). The requirements are set forth in the SPECIFICATION SHEET set forth at page 8 below. **The said vehicles shall be delivered by the Bidder within 30 business days following notice of award but not later than December 1, 2013.**

It is Bidder's responsibility to ensure its bid is submitted by the deadline for acceptance. Any bid received after the time for receipt established in this Invitation will be returned unopened. All bids are subject to the provisions of M.G.L. Chapter 30B. Award shall be made to lowest responsive and responsible bidder.

All bids shall be submitted as one ORIGINAL and one COPY.

All City of Newton bids are available on the City's web site, www.newtonma.gov/bids, Invitations for Bid. It is the sole responsibility of the Bidder downloading these bids to ensure they have received any and all addenda prior to the bid opening. Addendas will be available online within the original bid document as well as a separate file. If you download bids from the internet site and would like to make it known that your company has done so, you may fax the Purchasing Department (617) 796-1227 or email purchasing@newtonma.gov with your NAME, ADDRESS, PHONE, FAX AND INVITATION FOR BID NUMBER.

The City will reject any and all bids in accordance with the above referenced General Laws. In addition, the City reserves the right to waive minor informalities in any or all bids, or to reject any or all bids (in whole or in part) if it be in the public interest to do so.

CITY OF NEWTON
Nicholas Read
Chief Procurement Officer
October 31, 2013

CITY OF NEWTON
DEPARTMENT OF PURCHASING
INSTRUCTIONS TO BIDDERS

ARTICLE 1 - BIDDER'S REPRESENTATION

- 1.1 Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that the Bidder has read and understands these Bidding Documents, Contract Forms, General Conditions, Conditions of the Contract, General Requirements and Project Specifications (collectively, as applicable, referred to as the "Contract Documents") and the bid is made in accordance therewith.
- 1.2 Failure to so examine the Contract Documents will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - REQUEST FOR INTERPRETATION

- 2.1 Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the *Chief Procurement Officer*, at purchasing@newtonma.gov or via facsimile (617) 796-1227. The City will only answer such requests if received by **Friday, November 8, 2013 at 12:00 noon**.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by addendum which will become part of the Contract Documents. The City will not be held accountable for any oral communication.
- 2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file, in addition to being available online at www.newtonma.gov/bids.
- 2.6 Bidders or proposers contacting ANY CITY EMPLOYEE regarding an Invitation for Bid (IFB) or a Request for Proposal (RFP), outside of the Purchasing Department, once an IFB or RFP has been released, may be disqualified from the procurement process.
- 2.7 Bidders downloading information off the internet web site are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes itself known to the Purchasing Department, at purchasing@newtonma.gov or via facsimile (617) 796-1227, it shall be placed on the bidder's list. Bidders must provide the Purchasing Department with their company's name, street address, city, state, zip, phone, fax, email address and **INVITATION FOR BID #14-50**.

ARTICLE 3 - MBE PARTICIPATION

- 3.1 Notice is hereby given that the Mayor's Affirmative Action Plan for the City of Newton in effect at the time of this solicitation is applicable to all construction contracts in excess of \$10,000.00.
- 3.2 Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan and the Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program in effect at the time of this solicitation are applicable to all City contracts for goods and services in excess of \$50,000.00.
- 3.3 Copies of the Plans and Program referred to in Sections 3.1 and 3.2 are available at: www.newtonma.gov/purchasing.

ARTICLE 4 - PREPARATION AND SUBMISSION OF BIDS

- 4.1 Bids shall be submitted on the "Bid Form" as appropriate, furnished by the City.
- 4.2 All entries on the Bid Form shall be made by typewriter or in ink.
- 4.3 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
- 4.4 The Bid, including the bid deposit shall be enclosed in a sealed envelope with the following plainly marked on the outside:
- * GENERAL BID FOR: **#14-50**
 - * NAME OF PROJECT: **RENTAL OF SIX (6) SKID STEER LOADERS**
 - * BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER
- 4.6 Date and time for receipt of bids is set forth in the IFB.
- 4.7 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder. In the event that Newton City Hall is closed on the date or at the time that bids are due, the date and time for receipt of bids shall be on the next business day following that the Newton City Hall and the Purchasing Department are open.
- 4.8 Bids shall be submitted with one **original** and one **copy**.
- 4.9 Be advised that a new Massachusetts law has been enacted that required all employees who work on Massachusetts public works construction sites must have no less than 10 hours of OSHA-approved safety and health training. See Chapter 306 of the Acts of 2004, which became effective July 1, 2006.
1. This requirement will apply to any general bid or sub bid submitted.
 2. This law directs the Massachusetts Attorney General to restrain the award of construction contracts to any contractor who is in violation to this requirement and to restrain the performance of these contracts by non-complying contractors.
 3. The contractor and all subcontractors on this project will be required to provide certification of compliance with this requirement. Non-compliance with this law will disqualify you from bidding on public contracts.

ARTICLE 5 - ALTERNATES

- 5.1 Each Bidder shall acknowledge alternates (if any) in Section C on the Bid Form.
- 5.2 In the event an alternate does not involve a change in the amount of the base bid, the Bidder shall so indicated by writing "No Change", or "N/C" or "0" in the space provided for that alternate.
- 5.3 Bidders shall enter on the Bid Form a single amount for each alternate which shall consist of the amount for work performed by the Contractor.
- 5.4 The low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

ARTICLE 6 - WITHDRAWAL OF BIDS

- 6.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or electronic request. Electronic withdrawal of bids must be confirmed over the Bidder's signature by written notice on or before the date and time set for receipt of bids.
- 6.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
- 6.3 No bids may be withdrawn within sixty (60) days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

ARTICLE 7 - CONTRACT AWARD

- 7.1 The City will award one (1) contract to the lowest responsive and responsive and responsible Bidder within sixty (60) days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.
- 7.2 The City reserves the right to waive minor informalities in or to reject any or all Bids if it be in the public interest to do so.
- 7.3 The City reserves the right to reject any bidder who has failed to pay any local taxes, fees, assessments, betterments, or any other municipal charge, unless the bidder has a pending abatement application or has entered into a payment agreement with the collector-treasurer.
- 7.4 As used herein, the term "lowest responsive and responsible Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who has met all the requirements of the invitation for bids; (3) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (4) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.
- 7.5 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a lease in the form included in the Contract Documents in such number of counterparts as the City may require.
- 7.6 In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process chosen by the City such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

ARTICLE 8 - TAXES

- 8.1 The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.
- 8.2 The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The City's exemption Number is E-046-001-404.

END OF SECTION

CITY OF NEWTON

DEPARTMENT OF PURCHASING

BID FORM #14-50

- A.** The undersigned proposes to supply and deliver the materials and/or equipment and/or supplies specified below in full accordance with the Contract Documents and Project Manual supplied by the City of Newton entitled:

RENTAL OF SIX (6) SKID STEER LOADERS

for the contract price(s) specified below, subject to additions and deduction according to the terms of the specifications.

- B.** This bid includes addenda number(s) _____, _____, _____, _____,

- C.** The Bidder proposes to lease to the City

SIX (6) SKID STEER LOADERS

according to the Specifications below at the following price, FOB delivered to Newton, MA:

TOTAL PRICE \$_____

AND (Price In Words) _____

COMPANY:_____

State Delivery Time (number of calendar days after receipt of order):_____

- D.** The undersigned has completed and submits herewith the following documents:

- ☐ Signed Bid Form, 2 pages
- ☐ Bidder's Qualifications and References Form, 2 pages
- ☐ Certificate of Non-Collusion, 1 page
- ☐ Debarment Letter, 1 page
- ☐ IRS Form W-9, 1 page
- ☐ Certification of Tax Compliance, 1 page

- E.** Prompt Payment Discounts. Bidders are encouraged to offer discounts in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice only when in exchange for discounted prices. Discounts will not be considered in determining the lowest responsible bidder.

Prompt Payment Discount _____% _____Days

Prompt Payment Discount _____% _____Days

Prompt Payment Discount _____% _____Days

- F.** The undersigned agrees that, if selected as contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City of Newton, execute a contract in accordance with the terms of this bid. The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that's/he will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30B. The successful bidder will be required to furnish a Performance Bond each in the amount of 100% of the contract total.

The undersigned further certifies under the penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of Bidder)

BY: _____

(Printed Name and Title of Signatory)

(Business Address)

(City, State Zip)

(Telephone & FAX)

(E-mail address)

NOTE: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

END OF SECTION

DEPARTMENT OF PUBLIC WORKS

SKID STEER LOADER SPECIFICATIONS

Engine

Engine Cooling	Liquid
Emissions Tier (EPA)	Interim Tier 4
Engine Fuel	Diesel
Horsepower	49 HP
Turbocharged Engine	No

Performance

Rated Operating Capacity (SAE)	1300 lbs
Tipping Load	2634 lbs
Operating Weight	5235 lbs
Travel Speed	7.3 mph
Travel Speed (2-speed option)	N/A

Capacities

Fuel Tank	13.3 gal
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Hydraulic System

System Relief @ Quick Couplers	2700 psi
Auxiliary Std Flow	16.9 GPM
Auxiliary High Flow	N/A

Dimensions

Length	95.8 in
Length without Attachment	95.8 in
Length with Standard Bucket	124.1 in
Width	54 in
Width (with bucket)	62 in
Height	77.3 in
Height with Operator Cab	77.3 in
Height to Bucket Hinge Pin	109.5 in
Reach @ Maximum Height	22.6 in
Turning Radius	68.7 in
Wheelbase	35.5 in

END OF SECTION

CITY OF NEWTON

BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3. INCORPORATED? ____ YES ____ NO DATE AND STATE OF INCORPORATION: _____
4. IS YOUR BUSINESS A **MBE**? ____ YES ____ NO **WBE**? ____ YES ____ NO or **MWBE**? ____ YES ____ NO
- * 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- * 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?
____ YES ____ NO
IF YES, WHERE AND WHY?

- * 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? ____ YES ____ NO
IF YES, PROVIDE DETAILS.

- * 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

- * 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

END OF SECTION

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

(Signature of individual)

Name of Business

City of Newton



Mayor
Setti D. Warren

Purchasing Department
Nicholas Read & Chief Procurement Officer
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
purchasing@newtonma.gov

Telephone
(617) 796-1220
Fax:
(617) 796-1227
TDD/TTY
(617) 796-1089

Date

Vendor

Re: Debarment Letter for Invitation For Bid #_____

As a potential vendor on the above contract, the City requires that you provide a debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

I hereby certify under pains and penalties of perjury that neither I nor any principal(s) of the Company identified below is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

_____(Name)
_____(Company)
_____(Address)
_____(Address)
PHONE _____ FAX _____
EMAIL _____

Signature

Date

If you have questions, please contact Nicholas Read, Chief Procurement Officer at (617) 796-1220.

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ -----
☐ Other (see instructions) ▶

X Exempt
payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

or

Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign
Here**

Signature of
U.S. person ▶

Date ▶

Name

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

CITY OF NEWTON, MASSACHUSETTS

PURCHASING DEPARTMENT

GENERAL TERMS AND CONDITIONS

1. The right is reserved to reject any and all bids, to waive informalities, and to make award as may be determined to be in the best interest of the City of Newton.
2. Prices quoted must include delivery to the City, as specified on the Purchase Order.
3. No charges will be allowed for packing, crating, freight, Express or cartage unless specifically stated and included in the bid.
4. The award to the successful bidder may be canceled if successful bidder shall fail to prosecute the work with promptness and diligence.
5. Time in connection with discount offered will be computed from the date of delivery to the City, as specified on purchase order, or from date correct invoice is received by the City, if the latter date is later than the date of delivery.
6. The successful bidder shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of articles furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Seller.
7. The Seller shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Seller, within a reasonable time, will at its expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment or apparatus, and refund the sums paid therefor.
8. The successful bidder shall comply with all applicable Federal State and Local laws and regulations.
9. Purchases made by the City are exempt from Federal excise taxes and bid prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
10. If so stated in the Invitation For Bid the successful bidder will be required to furnish a performance and/or a labor and material payment bond, in an amount, in a form and with a surety satisfactory to the City. The bidder shall be responsible for the cost of the bond(s).
11. If the Invitation for Bids requires bid surety, this surety shall be in the form of a cash, bid bond, cashier's check, treasurer's check, or certified check on a responsible bank, payable to the City of Newton, and must be filed with the original bid in the Office of the Chief Procurement Officer. Failure to do so will lead to rejection of bid. The bid surety will be returned to the successful bidder within seven (7) days execution of awarded, and approval by the City of performance and/or payment bond(s). In case of default, the bid surety shall be forfeited to the City.
12. Verbal orders are not binding on the City and deliveries made or work done without formal Purchase Order or Contract are at the risk of the Seller or Contractor and may result in an unenforceable claim.
13. The Seller shall agree to indemnify, defend and hold the City harmless from any and all claims arising out of the performance of this contract.
14. "Equal" - An item equal to that named or described in the specifications of the contract may be furnished by the Vendor and the naming of any commercial name, trademark or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of equality only. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. The name and identification of all materials other than the one specifically named shall be submitted to the

City in writing for approval, prior to purchase, use or fabrication of such items. Subject to the provisions of M.G.L., Ch. 30, Sec. 39J, approval shall be at the sole discretion of the City, shall be in writing to be effective, and the decision of the City shall be final. The City may require tests of all materials so submitted to establish quality standards at the Vendor's expense. All directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment and operation of their equipment shall be complied with; responsibility for proper performance shall continue to rest with the Vendor.

For the use of material other than the one specified, the Vendor shall assume the cost of and responsibility for satisfactorily accomplishing all changes in the work as shown. If no manufacturer is named, the Vendor shall submit the product he intends to use for approval of the City.

Except as otherwise provided for by the provisions of M.G.L., Ch. 30, Sec. 39J, the Vendor shall not have any right of appeal from the decision of the City condemning any materials furnished if the Vendor fails to obtain the approval for substitution under this clause. If any substitution is more costly, the Vendor shall pay for such costs."

15. Notice is hereby given that the Mayor's Affirmative Action Plan for the City of Newton, dated July 1995 Applicable to all contract in excess of \$10,000.00 A copy of this plan is on file at the City of Newton, Purchasing Dept. This paragraph applies to City of Newton purchases only.
16. Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan dated December 1999 is applicable to all City of Newton contracts for materials and supplies. A copy of this plan may be obtained from the Purchasing Department.
17. Right To Know:

Any vendor who receives an order or orders resulting from this invitation agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to M.G.L., Ch. 111F, SS8, 9 and 10 and the regulations contained in 441 CMR SS 21.06 when deliveries are made. The vendor agrees to deliver all containers properly labeled pursuant to M.G.L. Ch. 111F, SS 7 and the regulations contained in 441 CMR SS 21.05. Failure to submit an MSDS and/or label on each container will place the vendor in noncompliance with the purchase order. Failure to furnish MSDSs and/or labels on each container may result in civil or criminal penalties, including bid debarment and action to prevent the vendor from selling said substances or mixtures containing said substances within the Commonwealth. All vendors furnishing substances or mixtures subject to Chapter 111F of the M.G.L. are cautioned to obtain and read the law and rules and regulations referred to above. Copies can be obtained from the State House Book Store, Secretary of State, State House, Room 117, Boston, MA 02133, (617-727-2834) for \$2.00 plus \$.65 postage.

**FAILURE TO COMPLY WITH THESE TERMS AND CONDITIONS COULD RESULT IN THE
CANCELLATION OF YOUR CONTRACT.**

CERTIFICATION OF TAX COMPLIANCE

Pursuant to M.G.L. c.62C, §49A and requirements of the City, the undersigned acting on behalf of the Contractor certifies under the penalties of perjury that the Contractor is in compliance with all laws of the Commonwealth relating to taxes including payment of all local taxes, fees, assessments, betterments and any other local or municipal charges (unless the Contractor has a pending abatement application or has entered into a payment agreement with the entity to which such charges were owed), reporting of employees and contractors, and withholding and remitting child support.*

**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

Print Name:_____

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

Print Name:_____

* The provision in this Certification relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted until the City receives a signed copy of this Certification.

*** Your social security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

CONTRACT FORMS

The awarded bidder will be required to complete and submit documents substantially similar in form to the following.

These forms may need to be modified on account of changed circumstances, and are provided for informational purposes only.

CITY - CONTRACTOR LEASE AGREEMENT

THIS AGREEMENT OF LEASE made this ____ day of _____ in the year Two Thousand and Thirteen by and between _____ (“Lessor”) and the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts (“Lessee”), acting through its Chief Procurement Officer, but without personal liability to him, and

1. Lease of Equipment. Lessor hereby leases to Lessee, and Lessee hereby hires and takes from Lessor the following-described personal property (together with all replacement parts, additions, repairs and accessories)(“leased equipment”):

[Describe equipment fully, including make, kind of unit, serial and model numbers, and any other pertinent information]

Term.

2. Term. This lease is for a term of _____ months, beginning _____, _____, and ending _____, _____.

Rentals.

3. Rentals. For said term, or any portion thereof, Lessee shall pay to Lessor rentals aggregating _____ dollars (\$_____), of which _____ dollars (\$_____) shall be due on or before _____, _____ *(the date on which Lessor estimates the leased equipment will be shipped to Lessee)*, and the balance of the rental, _____ dollars (\$_____), shall be payable in _____ equal successive monthly rental payments of \$_____ dollars (\$_____) each, of which the first is due _____, _____, and the others on a like date of each month thereafter, until fully paid. All rent shall be paid at Lessor’s place of business shown above, or such other place as the Lessor may designate by written notice to the Lessee. All rents shall be paid without notice or demand and without abatement, deduction or set-off of any amount whatsoever. The operation and use of the leased equipment shall be at the risk of Lessee, and not of Lessor and the obligation of Lessee to pay rent hereunder shall be unconditional.

Destruction of Leased Equipment.

4. Destruction of Leased Equipment. If any leased equipment is totally destroyed, the liability of the Lessee to pay rent therefor may be discharged by paying to Lessor all the rent due thereon, plus all the rent to become due thereon less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss or damage. Lessor shall not be obligated to undertake, by litigation or otherwise, the collection of any claim against any person for loss or damage of the leased equipment. Except as expressly provided in this paragraph, the total or partial destruction of any leased equipment, or total or partial loss of use or possession thereof to Lessee, shall not release or relieve Lessee from the duty to pay the rent herein provided.

No Warranties by Lessor.

5. No Warranties by Lessor. LESSOR, NOT BEING THE MANUFACTURER OF THE LEASED EQUIPMENT, NOR MANUFACTURER’S AGENT, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION, EQUIPMENT OR WORKMANSHIP IN THE LEASED EQUIPMENT, NOR ANY WARRANTY THAT THE LEASED EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATORS, OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE ARE TO BE BORNE BY THE LESSEE AT ITS SOLE RISK AND EXPENSE.

No oral agreement, guaranty, promise, condition, representation or warranty shall be binding; all prior conversations, agreements or representations related hereto and/or to the leased equipment are integrated herein, and no modification hereof shall be binding unless in writing signed by Lessor.

Shipping Charges, Compliance With Laws, Insurance.

6. Shipping Charges, Compliance With Laws, Insurance. Lessee agrees, at its own cost and expense; (a) to pay all shipping

charges and other expenses incurred in connection with the shipment of the leased equipment by the Seller to the Lessee; (b) to pay all charges and expenses in connection with the operation of each item of leased equipment; (c) to comply with all governmental laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the leased equipment; (d) to maintain at all times public liability, property damage, fire, theft and comprehensive insurance in an amount satisfactory to Lessor, protecting Lessor's interest as it may appear, delivering to Lessor evidence of such insurance coverage; and (e) to make all repairs and replacements required to be made to maintain the in good condition, reasonable wear and tear excepted.

Taxes.

7. Taxes. The Lessee is a municipal corporation and is not subject to taxes of any type. Any taxes related to the leased equipment shall be the responsibility of the Lessor.

Identification of Leased Equipment.

8. Identification of Leased Equipment. Lessor may at its expense identify the leased equipment in such manner as is commercially reasonable.

Title of the Lessor.

9. Title of the Lessor. Title to the leased equipment shall at all times remain in the Lessor, and Lessee will at all times protect and defend, at its own cost and expense, the title of the Lessor from and against all claims, liens and legal processes of creditors of the Lessee and keep all leased equipment free and clear from all such claims, liens and processes. The leased equipment is and shall remain personal property. Upon the expiration or termination of this lease, the Lessee at Lessee's sole expense shall return the leased equipment unencumbered to Lessor at such place designated by the Lessee, provided that such place is within reasonable distance of the Lessee, or to such other place as Lessor and Lessee agree upon, and in the same condition as when received by Lessee, reasonable wear and tear resulting from use thereof alone excepted.

Possession, Place of Use, Changes in Location.

10. Possession, Place of Use, Changes in Location. So long as Lessee shall not be in default under this lease it shall be entitled to the possession and use of the leased equipment in accordance with the terms of this lease. The leased equipment shall be used in the conduct of the lawful business of the Lessee, shall be kept in the City of Newton in the County of Middlesex, State of Massachusetts, and shall not be removed from such location without the prior written consent of the Lessor. The Lessee shall not, without Lessor's prior written consent, part with possession or control of the leased equipment or attempt to sell, pledge, mortgage or otherwise encumber any of the leased equipment or attempt to purport to sell, pledge, assign, transfer or otherwise dispose of or encumber any interest under this lease.

Performance of Obligations of Lessee by Lessor.

11. Performance of Obligations of Lessee by Lessor. In the event that the Lessee shall fail duly and promptly to perform any of its obligations under the provisions of articles 5, 6, 7, and 8 of this lease leased equipment to be performed by the Lessee, the Lessor may, at its option, immediately or at any time thereafter perform the same for the account of Lessee without thereby waiving such default, and any amount paid or expense or liability incurred by Lessor in such performance, together with interest at the rate of 2% per annum thereon until paid by the Lessee to the Lessor, shall be payable by the Lessee upon demand as additional rent for the leased equipment.

Right of Inspection.

12. Right of Inspection. Lessor shall have the right from time to time during reasonable business hours to enter upon the Lessee's premises or elsewhere for the purpose of confirming the existence, condition and the proper maintenance of the leased equipment. The foregoing rights of entry are subject to any applicable governmental laws, regulations and rules concerning industrial security.

Default.

13. Default. There shall be deemed to be a breach of this lease (a) if Lessee shall default in the payment of any rent hereunder and such default shall continue for a period of 10 days, (b) if Lessee shall default in the performance of any of the other covenants herein and such default shall continue uncured for 15 days after written notice thereof to Lessee by Lessor, or (c) if Lessee ceases doing business as a going concern, or if a petition is filed by or against Lessee under the Bankruptcy Act or any amendment thereto (including a petition for reorganization, arrangement or an extension), or if Lessee attempts to remove or sell or transfer or encumber or sublet or part with possession of the leased equipment or any part thereof. In the event of a breach of this lease, as

herein defined, (a) the leased equipment shall upon Lessor's demand forthwith be delivered to Lessor at Lessee's expense at such place as Lessor shall designate and Lessor and/or its agents may, without notice or liability or legal process, enter into any premises of, or under control or jurisdiction of Lessee or any agent of Lessee where the leased equipment may be or by Lessor is believed to be, and repossess all or any part of the leased equipment disconnecting and separating all thereof from any other property, Lessee hereby expressly waiving all further rights to possession of the leased equipment and all claims for injuries suffered through or loss caused by such repossession, and (b) all sums due and to become due hereunder shall, at Lessor's option, become payable forthwith, and the Lessor, in addition to being entitled to take possession of the leased equipment as hereinbefore described, also shall be entitled to recover immediately as and for damages for the breach of this lease and not as a penalty, an amount equal to the difference between the aggregate rent reserved hereunder for the unexpired term of the lease (hereinafter called "Remaining Rentals") and the then aggregate rental value of all leased equipment for the unexpired term of the lease (hereinafter called "Unexpired Rental Value of Leased Equipment"), provided, however, that if any statute governing the proceeding in which such damages are to be proved, specifies the amount of such claim, Lessor shall be entitled to prove as and for damages for the breach, an amount equal to that allowed under such statute. The provisions of this paragraph shall be without prejudice to any rights given to the Lessor by such statute to prove for any amounts allowed thereby. Lessor, upon any breach of this lease, may sell the leased equipment or may re-lease such equipment for a term and a rental which may be equal to, greater than or less than the rental and terms herein provided, and any proceeds of such sale received within sixty days after Lessor receives possession of the leased equipment or any rental payments received under a new lease made within such sixty days for the period prior to the expiration of this lease, less Lessor's expenses of taking possession, storage, reconditioning and sale or releasing, shall be deemed and considered for the purposes of this paragraph as being the Unexpired Rental Value of Leased Equipment. If the Unexpired Rental Value of Leased Equipment exceeds the Remaining Rentals, Lessor shall be entitled to the excess. The provisions of this paragraph shall be without prejudice to Lessor's right to recover or prove in full damages for unpaid rent that accrued prior to the breach of the lease. In the event of a breach of this lease, Lessor, at its option, may enforce by appropriate legal proceedings specific performance of the applicable covenants of this lease as well as any other remedy herein provided. Should any legal proceedings be instituted by Lessor to recover any moneys due or to become due hereunder and/or for possession of any or all of the leased equipment, Lessee shall pay a reasonable sum as attorneys' fees.

Indemnity.

14. Indemnity. To the extent permitted by the Massachusetts Constitution, the Lessee agrees to indemnify and hold harmless Lessor from and against any and all claims for property damage or personal injury that may result directly or indirectly from the negligent acts or omissions of its employees while under the direction, supervision or control of the Lessee's employees, provided that the extent of the Lessee's indemnification hereunder shall not exceed the Lessee's liability for the negligent acts or omissions of its employees as governed by Massachusetts General Laws chapter 258.

Assignment.

15. Assignment. This lease and all rights of Lessor hereunder shall be assignable by Lessor without Lessee's consent, but Lessee shall not be obligated to any assignee of the Lessor except after written notice of such assignment from the Lessor. Without the prior written consent of Lessor, the Lessee shall not assign this lease or its interests hereunder or enter into any sublease with respect to the leased equipment covered hereby, it being agreed Lessor will not unreasonably withhold its consent to a sublease of the leased equipment.

No Purchase Option.

16. No Purchase Option. Lessee shall have no option to purchase or otherwise acquire title to or ownership of any of the leased equipment and shall have only the right to use the same under and subject to the terms and provisions of this lease.

Further Assurances.

17. Further Assurances. Lessee shall execute and deliver to Lessor, upon Lessor's request, such instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of this lease and Lessor's rights hereunder.

Notices, Remedies, Waivers.

18. Notices, Remedies, Waivers. All notices relating hereto shall be delivered in person to an officer of the Lessor or Lessee, or shall be mailed registered to Lessor or Lessee at its respective address above shown or at any later address last known to the sender.

Remedies, Waivers.

19. Remedies, Waivers. No remedy of Lessor hereunder shall be exclusive of any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy. A waiver of a default shall not be a waiver of any other or a subsequent default.

Irrevocability.

20. Irrevocability. This lease is irrevocable for the full term hereof as set forth in paragraph 2 hereof and for the aggregate rentals herein reserved in paragraph 3, and the rent shall not abate by reason of termination of Lessee's right of possession and/or the taking of possession by the Lessor or for any other reason, and delinquent installments of rent shall bear interest at the highest lawful contract rate or 1% per month, whichever be the lesser.

Option to Extend.

21. Option to Extend. Lessee shall have the option, if Lessee is not in default hereunder, upon giving written notice to Lessor at least 30 days prior to the termination of the term of this lease, to extend this lease for thirty (30) additional days, provided however, that the daily rent payable under the extension shall be the same as the daily rate paid under the initial term.

If Lessee is a corporation, this lease is executed by authority of its Board of Directors.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

_____,
Lessor

CITY OF NEWTON, Lessee

By _____

Print Name _____

Title _____

Date _____

Affix Corporate Seal Here

By _____

Chief Procurement Officer

Date _____

By _____

Public Works Commissioner

Date _____

City funds are available in the following
account:

38E11510-52407 -

I further certify that the Mayor, or his
designee, is authorized to execute contracts
and approve change orders

By _____

Comptroller of Accounts

Date _____

Approved as to Legal Form and Character

By _____

Associate City Solicitor

Date _____

CONTRACT AND BONDS APPROVED

By _____

Mayor or his designee

Date _____